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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 GUILLERMO GUERRERO,

11 Plaintiff,

No. C 18-02379 WHA

12 v.

13 COUNTY OF ALAMEDA, ALAMEDA
14 COUNTY SHERIFF'S DEPARTMENT,
15 THE SHERIFF OF THE ALAMEDA
16 COUNTY SHERIFF'S DEPARTMENT,
GREGORY J. AHERN, DEPUTY SHERIFF G.
STEVENS; and DOES 1 through 10, Inclusive,

17 Defendants.
18 _____/

**ORDER DENYING
PETITION FOR RELIEF
AND GRANTING COUNTY
OF ALAMEDA AND
GREGORY J. AHERN'S
MOTION TO DISMISS**

19 **INTRODUCTION**

20 In this excessive-force case, plaintiff petitions for an order that his state claims are in
21 compliance with Section 910 of the California Government Code, or in the alternative an order
22 relieving him from Section 945.4. Additionally, two defendants seek to dismiss all claims
23 against them. For the reasons herein, the plaintiff's petition for relief is **DENIED** and the
24 defendants' motion to dismiss is **GRANTED**.

25 **STATEMENT**

26 In August 2017, an airport traffic officer issued a traffic ticket to plaintiff Guillermo
27 Guerrero for parking in a ten-minute loading zone while waiting to pick up his wife from the
28 Oakland International Airport. Plaintiff subsequently complained to the officer that he had not

1 parked for more than ten minutes. The officer then called over Alameda County Deputy
2 Sheriff Stevens. Deputy Stevens asked plaintiff for a “high-five” and then grabbed and twisted
3 plaintiff’s right arm. As a result, plaintiff needed orthopedic surgery, physical therapy, and
4 occupational therapy (Guerrero Decl. ¶¶ 1–2).

5 Later in August 2017, plaintiff went to the Alameda County Sheriff’s Department to
6 present a government tort claim. The Sheriff’s Department gave plaintiff a citizen’s complaint
7 form. In February 2018, plaintiff received correspondence from the Sheriff’s Department
8 stating that Deputy Stevens did in fact use excessive force. After receiving the notice, plaintiff
9 realized he had filled out a citizen’s complaint form instead of a government tort claim form
10 (*id.* ¶ 3). By then, the six-month statute of limitations to bring a government tort claim had
11 already elapsed under Section 945.4 of the California Government Code.

12 On April 20, 2018, plaintiff filed herein a petition under Section 946.6 of the California
13 Government Code, asking for relief from the statute of limitations governing claims brought
14 under the Government Claims Act. A May 31 order treated the petition as an excessive force
15 claim under Section 1983 of Title 42 of the United States Code and directed plaintiff to
16 promptly serve the summons and a new complaint on all defendants. On June 6, plaintiff filed
17 the summons and new complaint and served all defendants. Plaintiff now files a new petition
18 for an order that he is in substantial compliance with Section 910 of the California Government
19 Code, or in the alternative for relief under Section 946.6 of the California Government Code.
20 Additionally, defendants the County of Alameda and Gregory J. Ahern, the elected Sheriff of
21 Alameda County and supervisor of defendant Deputy Sheriff Stevens, move to dismiss the
22 claims against them.

23 ANALYSIS

24 1. REQUEST FOR SUBSTANTIAL COMPLIANCE UNDER 910 25 AND PETITION FOR RELIEF UNDER 946.6 DENIED.

26 Before a claimant can sue a public entity or public employee for money damages under
27 state law for actions taken within the scope of the person’s employment, he or she must file a
28 government claim pursuant to the California Government Claims Act, codified at Section 810

1 of the California Government Code. *See Harlow v. Cty. of Riverside*, No. CV 06-55518,
2 2008 WL 4472934 (9th Cir. Oct. 6, 2008); *Willis v. Reddin*, 418 F.2d 702, 704 (9th Cir. 1969).

3 Section 910 dictates what a valid claim against a public entity must contain, including a
4 description of the occurrence and the injury endured. (This does not, of course, apply to claims
5 for relief under Section 1983.)

6 Personal injury claims must be filed within six-months after the accrual of the cause of
7 action. If they are not, then leave to present a late claim may be requested under Section 911.6.
8 If that leave is denied, then a claimant may petition for relief from the requirements of Section
9 945.4, which states:

10 Except as provided in Sections 946.4 and 946.6, no suit for money
11 or damages may be brought against a public entity on a cause of
12 action for which a claim is required to be presented . . . until a
13 written claim therefor has been presented to the public entity and
14 has been acted upon by the board, or has been deemed to have
15 been rejected by the board.

16 Section 946.6 allows claimants to petition for relief from the claim requirements of
17 Section 945.4.

18 Plaintiff now petitions for relief either through substantial compliance with Section 910
19 of the California Government Code or through relief under Section 946.6.

20 **A. Claim Not in Substantial Compliance.**

21 Plaintiff fails to show that his claim substantially complied with Section 910. In order
22 for a claim to substantially comply with the claim requirements, it must be presented to the
23 designated claim recipient under Section 915 of the California Government Code.

24 *See DiCampli-Mintz v. Cty. of Santa Clara*, 55 Cal. 4th 983, 986 (2012); *Flock v. Cty. of*
25 *Alameda*, No. CV 12-01003, 2012 WL 4051120, at *2–3 (N.D. Cal. Sept. 13, 2012)

26 (Magistrate Judge Nathanael M. Cousins). Plaintiff fails to show compliance with this
27 requirement. Section 915(a) of the California Government Code sets forth the procedure
28 for claims presentation to a local public entity, which includes the defendants in this case.

The section provides:

a) A claim, any amendment thereto, or an application to the public
entity for leave to present a late claim shall be presented to a local
public entity by either of the following means:

1 (1) Delivering it to the clerk, secretary or auditor thereof.

2 (2) Mailing it to the clerk, secretary, auditor, or to the
3 governing body at its principal office.

4 California courts construing the section explain that: “included in the [Government] Claims Act
5 [is] what amounts to a requirement that one who sues a public employee on the basis of acts or
6 omissions in the scope of the defendant’s employment [must] have filed a claim against the
7 public entity employer pursuant to the procedure for claims against public entities.” *Briggs v.*
8 *Lawrence*, 230 Cal. App. 3d 605, 612–13 (1991). No form was every given to anybody except
9 a citizen’s complaint form. This order does not reach the legal question of whether using a
10 citizen’s complaint form was legally equivalent to using a government tort claim form. Instead,
11 this order holds that plaintiff delivered the form to the wrong person. The statute requires it to
12 be delivered to the County Clerk, but instead he took it to a different department all together, the
13 Sheriff’s Department.

14 Plaintiff argues that he has shown substantial compliance with the California Government
15 Claims Act under Section 915(e) even if he has not under 915(a) because his citizen’s complaint
16 form given to the Sheriff’s Office put defendants on notice (Reply Br. 4). Section 915(e) allows
17 for compliance if the form is received by the Clerk, even if plaintiff did not personally deliver it.
18 Section 915(e), however, states that the claim requirement is only met if it is *actually received*
19 by the clerk, secretary, auditor, or board of the local public entity. The requirements of
20 Section 915(a) and (e), which delineate the parameters of substantial compliance, have not been
21 met. The burden is on the claimant to prove actual notice, and the evidence provided does not do
22 so. *Garber v. City of Clovis*, 698 F. Supp. 2d 1204, 1215 (E.D. Cal. 2010) (Judge Anthony W.
23 Ishii). The California Supreme Court, in *DiCampli-Mintz*, has underscored the necessity of strict
24 compliance with the claim presentment requirements set forth in Section 915 of the Government
25 Code. 55 Cal. 4th at 986. Our state supreme court explained that “even if the public entity has
26 actual knowledge of facts that might support a claim, the claims statute must still be satisfied.”
27 Any allegations of defendants’ awareness of plaintiff’s complaint form are immaterial under the
28 statute. Plaintiff provides no allegations, supporting facts, or case law in the complaint to
demonstrate that the form was delivered to or actually received by the proper clerk, secretary,

1 auditor, or governing body. In this case, the County of Alameda Board of Supervisors would
2 serve as the correct governing body. Our court of appeals has not addressed this specific issue,
3 but this order holds that Section 915 refers to the *County* clerk, secretary, auditor, or governing
4 body in the context of defendants County of Alameda, County Sheriff's Department, County
5 Sheriff, and County Deputy Sheriff. Plaintiff's citizen's complaint was submitted to the Internal
6 Affairs department of the Alameda County Sheriff's Office, not to the Clerk of the Alameda
7 County Board of Supervisors. Plaintiff has presented no facts indicating that his complaint form
8 was ever *actually received* by the Clerk's office.

9 Section 950.2 of the California Government Code states "that a cause of action against
10 a public employee for injury resulting from an act or omission in the scope of his employment
11 as a public employee is barred unless a timely claim has been filed against the employing public
12 entity." *Fowler v. Howell*, 42 Cal. App. 4th 1746, 1750 (1996). As such, any civil action against
13 a public entity or employee, in this case the County of Alameda and its employees, is barred for
14 failure to present a timely claim due to a lack of substantial compliance. Accordingly, this order
15 **DENIES** the petition.

16 **B. This Court Does Not Have Jurisdiction Over 946.6 Petitions.**

17 Plaintiff petitions for relief under California Government Code Section 946.6 should his
18 substantial compliance argument be denied. As this order denies the substantial compliance
19 argument, the request for relief must be addressed.

20 The statute of limitations contained in Section 945.4 of the California Government Code
21 applies to suits for money damages brought against a public entity. Plaintiff contends that he
22 meets the requirements enumerated in Section 946.6, which allows claimants to petition for
23 leave to file a claim after the statute of limitations has run. Section 946.6 states, however, that
24 "[t]he proper court for filings the petition is a *superior* court that would be a proper court for the
25 trial of an action on the cause of action to which the claim relates." (Emphasis added.)

26 Federal district courts do not have the authority to grant the relief requested in plaintiff's
27 motion, instead plaintiff needs to file the petition in a California Superior Court. Cal. Gov. Code
28 § 946.6.

Our court of appeals has not interpreted Section 946.6, but the majority of district courts in this circuit interpret the provision as referring only to state superior courts, not federal district courts. *See Hill v. City of Clovis*, No. C 11-1591, 2012 WL 787609, at *12 (E.D. Cal. Mar. 9, 2012) (Judge Anthony W. Ishii); *Maximo v. San Francisco United Sch. Dist.*, No. C 10-3533, 2011 WL 1045292 (N.D. Cal. Mar. 21, 2011) (Magistrate Judge James Larson); *Hickenbottom v. City of San Rafael*, No. C 10-2025, 2010 WL 4009434, at *2 (N.D. Cal. Oct. 13, 2010) (Judge Susan Illston); *Ludavico v. Sacramento County*, No. C 08-1473 2009 WL 616868 (E.D. Cal. Mar. 11, 2009) (Judge Frank C. Damrell, Jr.); *Ovando v. City of Los Angeles*, 92 F. Supp. 2d 1011 (C.D. Cal. 2000) (Judge Gary Allen Feess). This order concurs with the majority opinion that a petition for relief from Section 945.4 must be filed in a California Superior Court. This is true regardless of plaintiff's Section 1983 claims.

The district court decisions that held differently did so based on language in Section 946.6 that has since been amended. *See Perez v. City of Escondido*, 165 F. Supp. 2d 1111 (S.D. Cal. 2001) (Magistrate Judge Anthony J. Battaglia). Prior to 2002, the language of Section 946.6 did not include the term "superior" and instead stated that the proper court for filing need only be "a court" which would be a competent court for the trial of an action on the cause of action. The legislature adopted the term "superior" in 2002. *Hill*, 2012 WL 787609, at *12. The only post-2002 decision that did not interpret "superior" to refer only to California Superior Courts relied on *Perez* in making its conclusion. *See Rahimi v. AMTRAK*, No. C 08-4712, 2009 WL 1883756, at *4 (N.D. Cal. June 30, 2009) (Magistrate Judge Maria-Elena James). The state claims against all defendants are therefore **DISMISSED** and a petition for relief may be filed in superior court.

2. MOTION TO DISMISS.

Defendants County of Alameda and Sheriff Ahern move to dismiss all state and federal claims against them (Dkt. No. 15).

A. State Claims Against County of Alameda And Sheriff Ahern Dismissed.

Defendants move to dismiss the state claims on the grounds that, among other things, plaintiff failed to substantially comply with the California Government Clams Act. Plaintiff

1 contends that he did substantially comply. In federal court, failure to allege facts which
2 demonstrate or excuse compliance with the California Government Claims Act subjects state law
3 claims to dismissal. *Mangold v. California Pub. Utils. Comm'n*, 67 F.3d 1470, 1477 (9th Cir.
4 1995). As this order finds, plaintiff did not substantially comply with Section 910 of the
5 California Government Code and this Court does not have jurisdiction to address a petition for
6 relief under Section 946.6. The state claims for relief of battery, negligence, violation of Civil
7 Code Section 52.1, and assault against defendants County of Alameda and Sheriff Ahern are
8 **DISMISSED** on procedural grounds. These procedural faults are unrelated to the Section 1983
9 claims.

10 **B. Federal Claims Against County of Alameda**
11 **And Sheriff Ahern Fail to State Sufficient Facts.**

12 To state a claim under Section 1983 of Title 42 of the United States Code, the complaint
13 must show that a person acting under color of state law committed the conduct at issue and
14 that the conduct deprived the plaintiff of some right, privilege, or immunity protected by the
15 Constitution or laws of the United States.” *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir.
16 1988). FRCP 8(a)(2) requires only “a short and plain statement of the claim showing that the
17 pleader is entitled to relief.” Although in order to state a claim a complaint does not need
18 detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to
19 relief requires more than labels and conclusions, and a formulaic recitation of the elements of a
20 cause of action will not do. Factual allegations must be enough to raise a right to relief above the
21 speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S 544 (2007).

22 **(1) Entity Liability Under Section 1983.**

23 Plaintiff contends that the County of Alameda failed to adequately train its officers
24 in the use of force and the protection of the substantive and procedural due process rights of
25 individuals. Plaintiff argues that as such, the County violated his Fourth and Fourteenth
26 Amendment rights.

27 Local governing bodies can be sued directly under Section 1983 only where the alleged
28 unconstitutional conduct is the result of an official policy, pattern, or practice. *Monell v. New*
York City Dept. Social Servs., 436 U.S. 658, 691 (1978). Here, the only constitutional claims

1 that remain are plaintiff's Fourth and Fourteenth Amendment claims against Sheriff Ahern,
2 Deputy Sheriff Stevens, and the County Sheriff's Department. Plaintiffs must show a sufficient
3 causal connection between the enforcement of the municipal policy or practice and the violation
4 of their federally protected right. *City of Canton v. Harris*, 489 U.S. 378 (1989). Rigorous
5 standards of culpability and causation must be applied to ensure that the municipality is not held
6 liable solely for the actions of its employees. *Bd. of the Cnty. Comm'rs. of Bryan Cnty. v.*
7 *Brown*, 520 U.S. 397, 405 (1996). "Liability for improper custom may not be predicated on
8 isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency
9 and consistency that the conduct has become a traditional method of carrying out policy."
10 *Monell*, 436 U.S. at 691.

11 Guerrero's complaint fails to allege sufficient facts to state a *Monell* municipal liability
12 claim against the County of Alameda. The complaint merely states in a conclusory manner
13 that the County failed to adequately train, supervise, and control their officers in the use of
14 force and in protecting the substantive and procedural rights of individuals and suspects (Compl.
15 ¶ 48). Our court of appeals has made clear the Supreme Court's requirement that plaintiffs
16 plead facts showing a plausible right to relief applies with equal force to *Monell* liability claims.
17 *A.E. ex rel. v. Cty. of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012). Our court of appeals states that,
18 "[i]n the past, our cases have not required parties to provide much detail at the pleading stage
19 regarding . . . policy or custom . . . municipal liability under Section 1983 [was] sufficient to
20 withstand a motion to dismiss even if the claim [was] based on nothing more than a bare
21 allegation that the individual officers' conduct conformed to official policy, custom, or practice."
22 *Ibid.* Since *Iqbal*, that standard no longer stands. Our court of appeals has clarified that "the
23 factual allegations that are taken as true must plausibly suggest an entitlement to relief, such
24 that it is not unfair to require the opposing party to be subjected to the expense of discovery
25 and continued litigation. This standard applies to *Monell* claims and should govern future
26 pleadings" *Id.* at 637.

27 As far as is alleged, the incident was an isolated one and not the result of an ongoing
28 policy, pattern, or practice. There are no facts alleged that support plaintiff's contention that

1 the purported policy, pattern, or custom was so persistent and widespread that it became a
2 traditional method of carrying out policy. *See Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir.
3 1996). Plaintiff states that defendant Deputy Sheriff Stevens has a history of violating people's
4 civil rights, but alleges no facts supporting this claim nor supporting that it is part of a broader
5 policy. In *Sullivan v. City of Berkeley*, No. CV 17-06051, 2018 WL 489011, at *7 (N.D. Cal.
6 Jan. 19, 2018), for example, the undersigned judge found that a complaint describing twelve
7 separate instances was sufficient to state a plausible practice or custom. The complaint here does
8 not meet such a threshold. The complaint here contains a fact pattern more analogous to
9 *Cardenas v. Cty. of Alameda*, No. CV 16-05205, 2017 WL 1650563 (N.D. Cal. May 2, 2017),
10 where the undersigned judge determined the plaintiffs' claim to be insufficient to show a well
11 settled custom when plaintiffs alleged that Alameda County engaged in a widespread custom of
12 allowing repeated acts of excessive force, without any other factual support.

13 Lastly, plaintiff alleges that the County failed to properly train its employee.
14 Inadequate training claims require plaintiff to show deliberate indifference to a constitutional
15 right. *Clouthier v. Cty. of Contra Costa*, 591 F.3d 1232, 1250 (9th Cir. 2010). The complaint
16 does not sufficiently state how the County's training policy meets the high standard of deliberate
17 indifference. In *Cardenas*, the undersigned judge addressed training as well, "[o]ther than
18 conclusory allegations, plaintiffs fail to show that the County had a training policy that amounted
19 to deliberate indifference." 2012 WL 1650563, at *4. We should not sustain an allegation
20 devoid of supporting facts.

21 Plaintiff cites Section 815.2 of the California Government Code for the contention
22 that a public entity is liable for injury caused by the act of an employee, but this code pertains
23 to government torts and not Section 1983 claims. It is therefore an inapplicable argument to the
24 claim for relief under entity liability.

25 No viable *Monell* claim exists within the fact pattern and as such the seventh claim for
26 relief, directed against the County of Alameda for entity liability, must be **DISMISSED**.
27
28

(2) *Fourth Amendment Claim.*

Plaintiff's fifth claim for relief fails to state sufficient facts to support a Fourth Amendment violation by defendant Sheriff Ahern, and therefore is insufficient to show that he violated plaintiff's rights. Beyond the specific proscription of excessive force, the Fourth Amendment generally proscribes unreasonable intrusions on one's bodily integrity. *Fontana v. Haskin*, 262 F.3d 871, 879 (9th Cir. 2001). Guerrero alleges that he was deprived of his civil rights to be free from excessive force, detention, and arrest (Compl. ¶ 42). The alleged facts demonstrate no personal involvement by defendant Sheriff Ahern. Section 1983 creates a claim for relief based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation. *Vance v. Peters*, 87 F.3d 987, 991 (9th Cir. 1996). Vicarious liability is inapplicable to Section 1983 suits. Plaintiff must plead that each official defendant, through the official's own individual actions, has violated the Constitution. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

Plaintiff asserts that Sheriff Ahern negligently or willfully employed defendant Stevens, but this does not support any constitutional violation by Sheriff Ahern. The complaint provides no causal link between the alleged negligent hiring and the deprivation of constitutional rights. Plaintiff fails to provide any facts that Sheriff Ahern was personally involved in the constitutional deprivation, there was a sufficient causal connection between defendant's conduct and the constitutional deprivation, or the defendant implemented a constitutionally deficient policy. *See Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011). Supervisor liability under Section 1983 exists when the supervisor was personally involved or there is a sufficient causal connection. *Ibid.* In *Starr*, our court of appeals ruled a supervisor claim satisfied the standard of FRCP 8(a), but there the claim made detailed allegations that went well beyond reciting the elements of a claim of deliberate indifference. *Id.* at 1216. The complaint in *Starr* alleged numerous incidents and that the Sheriff was given notice of each, far from the bare assertions present here. Though the claim need not be probable, it must allege factual allegations beyond legal conclusions. Plaintiff alleges no facts to support a claim under such pretenses. The fifth claim for relief against defendant Sheriff Ahern for violations of plaintiff's

1 Fourth Amendment rights must be **DISMISSED**. (This does not speak to the claim against
2 defendant Stevens or the Alameda County Sheriff's Department.)

3 (3) ***Claim for Relief Under Fourteenth Amendment***
4 ***Violation of Section 1983—Substantive***
And Procedural Due Process.

5 To state a procedural due process claim, a plaintiff must plead facts showing:

6 (1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest
7 by the government; and (3) lack of process. *Portman v. Cty. of Santa Clara*, 995 F.2d 898, 904
8 (9th Cir. 1993). The complaint is factually devoid of any process available or denied by
9 Sheriff Ahern and is insufficient to support a procedural due process claim. As such, the sixth
10 claim for relief against Sheriff Ahern fails to state a valid claim. As stated above, vicarious
11 liability is inapplicable to Section 1983 suits. *Iqbal*, 556 U.S. at 676.

12 Plaintiff further alleges that defendants deprived him of his substantive due process
13 rights guaranteed by the Fourteenth Amendment (Compl. ¶ 45). Plaintiff does not support the
14 contention with facts and does not mention it at all in his opposition to the motion to dismiss.
15 Moreover, where a particular Amendment provides an explicit source of constitutional
16 protection against a particular sort of government behavior, that Amendment is the guide for
17 analyzing such claims. *Albright v. Oliver*, 510 U.S. 266, 274 (1994). The Fourth Amendment
18 provides an explicit textual source of constitutional protection for pretrial deprivations of
19 liberty. As such, the 1983 claims must be analyzed under the Fourth Amendment, not under the
20 Fourteenth Amendment as plaintiff states. *Ibid*. The Fourth Amendment's prohibition against
21 unreasonable seizures of the person, or the Eighth Amendment's ban on cruel and unusual
22 punishments, are the two primary sources of constitutional protection against physically abusive
23 governmental conduct. *Graham*, 490 U.S. at 394. Therefore, no viable substantive due process
24 claim exists here.


25 For the reasons above, plaintiff fails to state a valid Fourteenth Amendment claim
26 against defendant Sheriff Ahern. The sixth claim for relief against Sheriff Ahern, claiming
27 violations of the Fourteenth Amendment on procedural and substantive due process grounds,
28 is therefore **DISMISSED**.

CONCLUSION

For the reasons listed herein, the petition for relief and request for substantial compliance are both **DENIED**. Additionally, defendants' motion to dismiss is **GRANTED**. Pursuant to Civ. L.R. 7-1(b), this order finds the motions suitable for submission without oral argument and hereby **VACATES** the hearing scheduled for August 16. The case management conference set for August 16 remains in place. Plaintiff may seek leave to amend. Plaintiff's motion for leave to amend must be filed and served by **AUGUST 13 at NOON**. A proposed amended complaint must be appended to the motion and plaintiff must plead his best case. Not only to the shortfalls expressly addressed in this order but also as to all other arguments raised in defendants' motions. Plaintiff shall come to the case management conference prepared to discuss any such amendments.

IT IS SO ORDERED.

Dated: August 1, 2018.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE